File number:
12 U 63/15
4 O 346/13 Ravensburg
Regional Court

675
658
EB 700

Stuttgart Higher Regional Court

12. CIVIL SENATE

In the name of the

people judgment

In the litigation

- Plaintiff and appellee -

Attorney-in-Fact:
Lawyers

against

- Defendant and appellant -

Attorney-in-Fact:
Lawyers

because of awarding

the Higher Regional Court of Stuttgart - 12th Civil Senate - by

Presiding Judge at the Higher Regional Court
Oleschkewitz, Judge at the Regional Court Dr. Schumann
and
Judge at the Higher Regional Court Dr. Munch

on the basis of the hearing held on 16.02.2016

for right:

1. On appeal by the defendant, the judgment of the Ravensburg Regional Court of 12.03.2015 - 4 0 346/13 - amended and worded as follows:

(1) The defendant is ordered to pay the plaintiff €492.54 plus annual interest thereon at a rate of 5 percentage points above the respective prime rate since April 16, 2014.

(2) For the rest, the claim is dismissed.

2. The defendant's further appeal is dismissed as inadmissible.

3. The costs of the legal dispute in both instances shall be borne by the plaintiff.

4. The judgment and the judgment of the District Court, insofar as it is upheld, shall be enforceable prior to execution.

The plaintiff may prevent the execution against security in the amount of 115% of the total amount of the claim.

The court may prevent the defendant from enforcing the amount in question unless the defendant provides security amounting to 115% of the amount to be enforced.

5. The amount in dispute in the appeal proceedings is set at up to €110,000.00.

Basics:

I.

The parties dispute in the main proceedings whether the plaintiff can claim the amount of €100,000 offered by the defendant for the detection of the measles virus.

1. The defendant, a biologist, is of the opinion - contrary to the unanimous opinion in the scientific community - that measles is not caused by viruses, that there is not and cannot be a measles virus. On the website of the "k-k Verlag ", which he operates, he offered "prize money" of €100,000.00 on November 24, 2011, as follows:

> The prize money will be paid if a scientific publication is presented in which the existence of the measles virus is not only claimed but also proven and in which, among other things, its diameter is determined.
>
> The prize money will not be paid if the determination of the by: meter of the measles virus is only madelle or drawing like ... ..."

For further details of the text, please refer to the detailed description in the facts of the judgment of the Ravensburg Regional Court and to Annex K 1. Whether the full text of the invitation to tender can be seen on the website of ,, k1-k Verlag" or could only be read by calling up the newsletter - which is also available on the Internet - has become a matter of dispute in the second instance. In any case, the plaintiff was not the recipient of the newsletter.

The plaintiff, then a student and now a physician, submitted several publications to the defendant in a letter dated January 31, 2012 (Annex K 4), which in his opinion proved the existence of the measles virus beyond doubt, and requested payment of the prize money. The defendant rejected this request because the measles virus had not been proven.

The defendant also operates the publishing house ,,W A und Verlag", on whose homepage it was temporarily possible to read on the Internet on April 13, 2014, three days after the first hearing in this case:

> ,,On Monday, 14.04.2014 we will report in this place, to which we will refer by newslet ter. that, why and how the unpromoted, non-specialist young doctor D Bund his illegal backers in the ,,bets that it is

no measles viruses" trial on 10.04.2014, var the Ravensburg Regional Court, lied to the court and the public. We expect that Dr. L will be acquitted on 24.04.2014and DB will be arrested for court fraud, inability to pay court and attorney fees, expenses and reimbursement of expenses, aiding and abetting mass bodily harm, in part resulting in death, and for risk of flight abroad."

The plaintiff objected to this and demanded a punishable declaration of discontinuance from the defendant, which the latter submitted on April 15, 2014 (Annex K 11).

Of the lawyer's fees incurred on the part of the plaintiff in the amount of € 492.54, he paid € 155.00 himself and was reimbursed for the excess amount by the lawyer representing the plaintiff.

0brige Zahlung erbringenden R Rechtsschutzversicherungs-AG for the assertion ermachtigt.

The plaintiff has submitted in the first instance,

All the requirements set by the defendant in his statement were fulfilled. The publications submitted by the defendant prove beyond doubt the existence of the virus in the scientific sense and determine its diameter.

The defendant already has to bear the asserted extrajudicial attorney's fees for the compliance with a penalty-proof cease-and-desist declaration because he is responsible for the content of his homepage. There is also prima facie evidence that the defendant himself posted the content on his homepage.

The plaintiff requested in the first instance,

1. Order the defendant to pay the plaintiff €100,000.00 plus 5% interest above the prime rate since May 1, 2012;

2. Order the defendant to pay the plaintiff a subsidiary claim in the amount of €2,924.07 in attorneys' fees incurred in the course of the proceedings;

3. Order the defendant to pay the plaintiff the amount of €492.54 plus 5% interest above the prime rate since April 16, 2014.

At first instance, the defendant requested that

the action be dismissed.

The defendant argued in the first instance,

the publications submitted did not meet the requirements set by the award. The existence of the measles virus had to be proven by a publication of the R -K, -Instituts (hereinafter: R), which is herefi.ir after

§ Section 4 of the Infectious Diseases Protection Act (IfSG). This is already clear from the fact that, with regard to the award made in Germany, the rules of the IfSG, which were created specifically for the provision of evidence in the area of infectious diseases, are to be applied. From

the context of the invitation to tender, the purpose of the invitation to tender was clearly to clarify whether there was documentation of the R- in accordance with the K 's postulate of isolation of the pathogen.

Furthermore, the submission of a single publication was required, in which both the evidence for the existence of the measles virus was provided and its diameter was determined, so that it was not sufficient if - as represented by the expert - only the combination of the scientific statements in the six submitted articles proved the existence of the measles virus and at least two of these articles contained sufficient information on the diameter of the measles virus. In addition, the content of the submitted publications did not meet the requirements for the presentation of evidence. The phenomena presented as measles viruses were in fact cellular transport vesicles (vesicles). None of the documentation presented was based on experiments in which the pathogen had been isolated and biochemically characterized beforehand, as was required, or even in which such isolation had been scientifically documented. The way in which the plaintiff relies on the evidence in the tests does not correspond to the state of the art in science and technology and does not meet the requirements for the presentation of evidencein compliance with the K 's postulatesaddition, the submitted works are already unsuitable because they all originate from the time before the entry into force of the IfSG on 01.01.2001 and do not represent a publication of the Rd. The determination of the diameter was also not well-founded. The size range of 300 to 1000 nm given in one of the publications submitted alone refuted the thesis of the virus, since viruses are characterized by a small variation in their diameter between 15 and a maximum of 400 nm.

tions. In addition, according to information provided by R on 24.01.2012, the diameter of measles viruses is 120 - 400 nm and they often contain ribosomes inside, although the latter contradict the existence of a measles virus.

The declaration on the homepage of the publisher ,, WA und Verlag" did not originate from him and at the time of the demanded cease-and-desist declaration had also already no longer been posted. Accordingly, he had not given rise to the extrajudicial activity of the plaintiff's authorized representatives.

With regard to the further submissions of the parties at first instance, reference is made to the facts of the judgment of the Regional Court and the pleadings exchanged at first instance together with the annexes and the transcripts of the hearings.

2. In its judgment, the operative part of which was read out at the end of the last minute of the proceedings (pp. 150, 151 of the official file), the Regional Court upheld the action in its entirety. The publication of the text of the invitation to tender on the Internet constituted a public announcement of the invitation to tender. The interpretation of the text leads to the conclusion that, contrary to the view of the defendant, the publications are neither those of the R nor do they have to originate from the time after the entry into force of the IfSG and that the text of the invitation to tender is also not to be understood to the effect that the required proof must be provided in a single publication or that review papers may not be used. As can be seen from the convincing expert opinion of Prof. Dr. Dr. p, , the publications were, without exception, scientific articles. They proved - in accordance with the statements of the expert - although not individually, but in their overall view the existence of a virus, which was causal for the measles disease. In their overall view, they also fulfilled the K1-H -s po stulates.
The own chain of evidence demanded by the defendant, according to which the measles virus must be photographed in a human being or his body fluid, isolated from it, purified, photographed again, and then its composition biochemically characterized with a subsequent reinfection experiment, was merely a hypothesis which did not have scientific significance, since it did not represent a scientifically established standard.

A claim for reimbursement of attorney's fees for the cease-and-desist declaration - with authorization of the legal protection insurance - exists from tort pursuant to § 831 8GB. The statement in question is a factual allegation that violates the plaintiff's personal rights. The defendant had not exonerated himself for the entry by any co-workers pursuant to § 831 (1) sentence 2 8GB, which is why their conduct was in any case attributable to him.

For more details on the reasons for the decision, please refer to the grounds of the judgment of the Regional Court.

The defendant filed an appeal against the judgment, which was served on him on April 15, 2015, with the Stuttgart Higher Regional Court on April 27, 2015. The grounds for appeal are - received there on July 7, 2015, following an extension of the deadline for filing the grounds of appeal to July 15, 2015.

3. The defendant argues in support of the appeal,

The effectiveness of the "protocol judgment" is already confirmed. Not all judges had signed the minutes. The combination of the minutes of the hearing and the decision formula signed by all judges was not sufficient. Furthermore, it was argued that the judgment had not been submitted to the court within the specified time limits. The substitute judge P may not have been prepared for the complexity of the case. Contrary to the protocol, the case had not been heard on the merits and on the evidence after hearing the expert, but rather the judgment of the chair had been followed by a

A "de facto ban on speaking and asking questions" had preceded the decision. The order to give notice and to take evidence of April 24, 2014, was not justified or was unenforceable. Finally, the legal hearing had been violated, since the witness Dr. M had not been summoned by R, the court had not responded to the reading of R's information of January 24, 2012, the Nebenklage had not been heard, and the offer of evidence regarding his published book "Der Masernbetrug" had not been complied with.

The full text of the award had not been made public, as it had been addressed in print only to the recipients of the newsletter of "k 1-k Verlag" who had registered for it.

With regard to the content of the invitation to tender, the specified criteria (cf. for the listing

of this by the plaintiff: Bl. 223 u. 384 ff. d. A.) had not been recorded correctly by the district court. Only a scientific publication in the sense of an original work and not an abstract could have been presented, in which it was claimed and proven that the measles virus existed, which was only possible by documenting an isolation and biochemical determination of the isolate, and in which the diameter was determined, which was only possible by "negative staining", which had not been done. Also, the determination of the diameter could not be done on the basis of models and drawings, which was done in the 6th publication (Presslin ge) . The question of the diameter of the ma sernvirus had b e e n put to PD Dr. M (R -), since this was of central importance. The background of the publication must also be taken into account when interpreting the announcement. It had been clearthat the awardaimed atthe R and its activities and that only publications after the entry into force ofthe IfSG in 2001 and after the establishment of the DFG's rules in 1998 were eligible. The publisher had regularly ,,k -k-actions ", in which informed citizens were urged to ask the R and state health authorities for evidence in the form of scientific publications proving the existence of disease-causing viruses and the measles virus. The subscribers of the ,,k -k The subscribers of the "k -k Verlag" had been trained by previous publications and events how to prepare a scientific publication and how to recognize from its content whether it contained evidence of the existence of a virus and the determination of its diameter. Only an original paper could contain the exact description of the experiment, the data analysis and the discussion of the results. The subscribers had known that proof of the existence of a virus could only be provided by isolating it, documenting the isolation that had taken place, and then documenting the determination of its few components. The recipients of the newsletters should have been able to check the presented evidence directly and by themselves. Also many scientific publications for laymen were only very difficult and cost-intensive to procure. Also therefore an original work had to be submitted. In its decision of April 24, 2014, the district court had not met the criteria that only one publication, an original work originating from the R and added a further criterion, namely the causality of the measles disease, instead. In the obri-

the award neverdemandedcompliance with the "K postulates".

In fact, the publications presented did not meet the criteria of the award, either individually or as a whole. The court had already not examined the articles itself. They were - undisputedly - only submitted (in English) during the appeal proceedings (p. 256 f. A.). Thus, the court had accepted that statements and arguments had been arbitrarily taken from the six publications and the publications cited therein by the expert and that these had been interpreted contrary to the statements and intentions of the authors and that additional statements had been invented which had not been made in the publications. Finally, a conglomerate of the statements of the authors had been constructed in a way that was not comprehensible and verifiable. Thus the expert had either not read the publication " Hiand M -"or had deliberately misrepresented it. The authors there just stated that no information was available on the propagation of the virus. Finally, this publication is also only secondary literature and the principle established by the expert himself that the submission of his own results is a mandatory prerequisite for this type of publication is not observed, since the authors quote themselves. With regard to the alleged inadmissibility of the individual papers, the defendant largely repeats and expands his submission from the first instance. The chain of evidence required by him to prove the measles virus is not new. The questions raised in his 78-page statement on the expert's report of November 17, 2014, had not been answered by the expert. The expert had been caught because he had mentioned the first name of the presiding judge of the Ravensburg Regional Court in his letter of March 3, 2015 (sheet 132 of the appendix), although his first name had never appeared in the proceedings. Finally, the statements of the expert were also refuted by the expert opinions that had been obtained in court (see, for example, statements by the lawyers Dr. E-, who had read the publications; the professors , and the ores. L and K1 -; Annex A 12 - A 15, p. 543 et seqq. of the official journal and annex to the written statement of the defendant's representative of 9.2.2016, A 22, Bl. 662 d. A.). Finally, it should be recalled once again that the RPD Dr. M who had been named as a witnesshad determined a coarse size of the viruses120 - 400 nm and that ribosomes had also been found in the material.

which, according to the expert's statements, spoke against a virus. Ultimately, the decision of the Regional Court was also incorrect, since the expert - contrary to the judgment - had not said that cantral experiments had been carried out on the basis of which it could be ruled out that not only cellular artifacts had been found in the studies.

The defendant requests:

1. On appeal by the defendant, the judgment of the Ravensburg Regional Court dated March 12, 2015, Case No. 4 0 346/13, is dismissed.

2. The action is dismissed.

The plaintiff requests,

dismiss the appeal.

The plaintiff carries var:

The judgment of the Regional Court did not contain any indications of incomplete or incorrect findings of fact or assessment. The prerequisites for obtaining a new expert opinion were not met. New factual arguments were not presented. In addition, only the objections from the first instance were raised, which had already been addressed at the time.

. had been made. There were no procedural deficiencies. Questions could have been asked and had been asked. The expert was not biased, since the first name of the judge had been visible on e-mails sent to all parties. The content of the minutes of 12.03.2015 was correct. Procedural deficiencies were denied as well as allegations made late. The "background" of the publications of the "k -k Verlag", which was alleged only in the second instance, was expressly denied. The Internet site had also been freely accessible, at any rate this also applied to the newsletter, which had hitherto been undisputed. The statements now submitted were not suitable for calling into question the expert opinion of the court. There were not only doubts about the knowledge of the expert W, for example, but also about the quality of the expert opinion.

- the economic viability of his work. According to the information on the Internetpartal ,,P "is J

L1 - follower of the "Germanic New Medicine", against whomprofessional bans had been imposedseveral times. Mrs. K -runs a naturopathic practice in M

and Ms. K had prepared the submitted expert opinion within the scope of a commissioned work for

the MGmbH & Co. KG created.

For further details of the parties' submissions at second instance, reference is made to the exchanged pleadings and annexes as well as the minutes of the meeting of February 16, 2016.

II.

The appeal is partially inadmissible. To the extent that it is admissible, it is also successful because, in any case, the criterion of the offer to prove the existence of the measles virus by "a scientific publication" has not been fulfilled by the plaintiff.

A. Admissibility of the appeal

The appeal is inadmissible in part.

The defendant's appeal was filed in due form and time and was also admissibly substantiated with regard to the claim for payment of the amount awarded of €100,000 plus interest and costs. However, the appeal is inadmissible with regard to the claim for reimbursement of pre-trial attorney's fees for the defendant's assertion of the submission of the declaration of discontinuance, as it was not properly substantiated in this respect.

Pursuant to Section 520 (1) of the Code of Civil Procedure, the appellant must give reasons for the appeal. According to

§ Pursuant to Section 520 (3) sentence 2 no. 2 of the Code of Civil Procedure, the grounds of appeal must contain a description of the circumstances which, in the opinion of the appellant, give rise to the infringement of the law and its relevance to the contested decision. Since the grounds of appeal must indicate the factual and legal grounds on which the appellant considers the contested judgment to be incorrect, the appellant must set out - tailored to the case in dispute and understandable in themselves - those points of a legal nature which he considers to be incorrectly assessed and, in addition, state the grounds on which the incorrectness of those points and their relevance to the contested decision are derived (cf. only BGH, decision of January 28, 2014, III ZB 32/13, juris no. 12).

In the statement of grounds of appeal of July 7, 2015, which was filed in due time, it was not explained at all why the decision of the Regional Court with regard to the attorney's fees awarded for the request for injunctive relief should be set aside and the action dismissed. In the pleading of November 16, 2015, received by the Higher Regional Court on November 17, 2015, a statement of reasons in accordance with the aforementioned requirements is also not provided. Insofar as it is argued for the first time that there is a procedural defect in that in the hearing on March 12, 2015 "was not negotiated and the reasons for the conviction and the Nebenklage only in the written UrteilbegrOn

The fact that "the claims of the plaintiff in this respect are disputed" and that "the defendant could not defend himself and exonerate himself here" (p. 383 of the appendix), it is again not explained why this would be relevant for the contested decision. The same applies with regard to the further procedural objections raised. Ultimately, however, this is not important, since in any case no proper statement of grounds was submitted within the time limit for filing a notice of appeal.

The appeal must therefore be dismissed as inadmissible pursuant to Section 522 (1) sentence 2 of the German Code of Civil Procedure insofar as the defendant objects to the order to pay €492.54 plus annual interest thereon at a rate of 5 percentage points above the respective base interest rate since April 16, 2014 (operative part of sentence no. 1. c.).

B. Reasonableness of the admissible appeal regarding the amount awarded in the amount of 100,000.00 € plus interest and costs

Insofar as the defendant's appeal is admissible, it is also well-founded, since the amount offered could only have been earned if the circumstances to be proven had all been presented in a self-contained work.

a. Effectiveness of the judgment

The judgment of the district court is effective.

The judgment was duly issued. Pursuant to Section 310 (1) sentence 1 of the Code of Civil Procedure, the judgment shall be pronounced on the date on which the oral proceedings are closed or on a date to be scheduled immediately. Pursuant to Section 311, Paragraph 2, Sentence 1, of the Code of Civil Procedure, the judgment shall be entered in the form of a verdict and shall be signed by the judges who participated in the decision (Section 315, Paragraph 1, Sentence 1, of the Code of Civil Procedure). The signatures of the judges

The judge must have been present at the hearing (cf. ZollerNallkammer, ZPO, 31st ed., § 309 ZPO marginal no. 2). Accordingly, all judges who participated in the decision have signed both the judgment stenar read out and the judgment delivered to the parties, which was drafted in full.

This was not a sag. The decision of the Federal Court of Justice (NJW-RR 2007, 141) cited by the plaintiff was based on a protakall judgment. The protakallurteil is a Stuhlurteil, with which the entire Urteilstext is taken up into the Protakoll and/or an annex which can be connected with it and in contrast to the case here gesanderte Urteilgründe remain un (see § 540 Abs. 1 Satz 2 ZPO and ZollerNollkammer, a.a.O., § 310 Rn. 3 m.w.N.). In the case cited above, the appeal judgment together with the grounds was only contained in the pratacall and this was only signed by the chairman of the senate and the clerk of the court and the missing signatures of the two associate judges could no longer be made up for with legal effect due to the expiry of the statutory five-month maximum period for the appeal (§ 548 ZPO).

Saweit the Defendant ri.igt, that the deduction period van three (Sec. 310 (1) Sentence 2 ZPO) had not been complied with, in fact the judgment, which was notified in full on March 12, 2015, did not reach the court until April 13, 2015 (see p. 180 R of the appendix), this cannot affect its validity (see Zoller-Nollkammer, loc. cit, § 310 ZPO marginal no. 5 with further references), even if important reasons, in particular the extent or the difficulty of the case, should not have justified an extension of the time limit for removal. The fact that Judge P could not have adequately prepared for the hearing has not been substantiated.

Even the other procedural rights, even assuming they were justified, cannot justify the ineffectiveness of the judgment. Even void and incorrect decisions are not ineffective (cf. Zoller-Nollkammer, loc.cit., var§ 300 ZPO marginal no. 20 with further references). Furthermore, it must be pointed out that a defect in the proceedings which is not to be taken into account ex officio, is only pri.ifed by the contested judgment if it is also found to be incorrect after

§ 520, Subsection 3, ZPO, was asserted in the notice of appeal. The aforementioned procedural deficiencies have not been raised in the notice of appeal in accordance with § 520, Subsection 3, Code of Civil Procedure.

§ The claim was not asserted until November 2015 by way of a written statement from the defendant's representatives dated December 11, 2015 (81. 379 et seq. of the appendix).

b. The plaintiff is not entitled to the reward offered in accordance with § 657 BGB.

Whoever by public announcement offers a reward for the performance of an act, in particular for the achievement of a success, is obliged to pay the reward to the person who has performed the act, even if he has not acted with regard to the offer (§ 657 BGB).

aa. Public announcement

The defendant has published the invitation to tender in accordance with Annex K 1 of 24 November 2011 on the Internet.

Public announcement means announcement to an individually indeterminate group of persons, e.g. in the press, on notice boards, by mailings to members of a professional group, so that it is uncertain which and how many persons have the possibility of taking note (cf. Palandt/Sprau, 8GB, 75th edition, § 657 BGB marginal no. 3).

In the first instance, it was undisputed that the full text of the award was visible to everyone on the Internet. A correction of the part of the facts of the judgment of the Regional Court containing the undisputed factual content was not requested.

The defendant is excluded with the new defense, namely with the claim that only subscribers of the newsletter could see the advertisement. According to
§ Section 531 (2) of the Code of Civil Procedure (ZPO), new means of attack and defense shall only be admissible if they

1. relate to a matter which the court of first instance may have overlooked or considered irrelevant,
2. were not asserted at first instance as a result of a procedural defect, or
3. The court of first instance did not assert any claims for damages without this being due to the party's negligence.

That one of the above-mentioned reasons for the subsequent admission of the submission would be conclusive here is neither presented nor evident.

In addition, even if the declaration was addressed to an individually defined circle of certain persons, this would only lead to the fact that it would then be

an offer of contract subject to acceptance to pay a certain wage for a certain action (cf. in this respect: Palandt/Sprau, a.a.a., § 675 BGB marginal no. 3 with further references). By confirming to the plaintiff on January 30, 2012 (Exhibit K 3) that the offer was still valid, the defendant had made him an offer to conclude a corresponding contract, which he then accepted. The cases were legally probably the same as for the offer.

bb. Intention to be legally bound and interpretation of the agreement

b.b.1. The defendant's statement does not lack the. Will to be legally bound.

In the present case, it could already be questionable whether the offer does not lack the legal intention necessary for the issuance of a declaration of intent. If the interpretation already shows that the promisor does not want to be legally bound, there is already no declaration of intent according to the normative value of the declaration (see Staudinger/Bergmann, BGB, revised 2006..,
§ 657 BGB marginal no. 28 with further references). Thus, sometimes the doctrine states that in situations in which the promisor does not wish the occurrence of the event or even considers it impossible (so-called negative promises), there may be a certain probability that the promisor lacks the will to be legally bound (cf. Staudinger/ Bergmann, loc. cit. with further references). However, even in the event that the promisor does not sincerely desire the achievement for which he promises the reward, or even considers its achievement impossible, the will to be legally bound cannot be denied, since he must create an incentive precisely to show that the act to be rewarded is not possible and that it is therefore impossible for him to perform it. therefore the Award a seriously meant commitment represents (see Staudinger/Bergmann, a.a.a. and Palandt/Sprau, a.a.a.,§ 657 BGB Rn. 4 m.w.N.). So it lies also here. The buyer has explicitly confirmed to the defendant that the promise is meant seriously.

b.b.2. Interpretation of the tender

What exactly is the subject of the invitation to tender is to be determined by interpretation. This is based on the understanding of an average party or a member of the group of persons addressed. The text of the declaration shall be interpreted as follows

only such circumstances are taken into account, which are known or recognizable to everyone or also to every member of the addressed circles (cf. BGHZ 53, 307 juris-Rn. 12; Palandt/Ellenberger, loc.cit., § 133 8GB Rn. 12 m.w.N., Erman/Berger, BGB, 14th ed, § 657 BGB marginal no. 10: interpretation according to §§ 133, 157 BGB). In the present case, this is to be assumed,

that - in accordance with the undisputed facts in the first instance - everyone had access to the text of the advertisement and that every Internet user interested in the subject of "vaccination", in particular "measles vaccination", belonged to the circle addressed.

Pursuant to Section 133 of the German Civil Code (BGB), when interpreting a declaration of intent, the actual intent is to be ascertained and not the literal meaning of the expression. Pursuant to Section 157 of the German Civil Code (BGB), contracts are to be interpreted in accordance with the requirements of good faith with due regard to custom and usage. Sections 133, 157 BGB apply selectively to the interpretation of contracts as well as to that of unilateral legal transactions - which is what is involved in the negotiation (cf. Palandt/Sprau, loc.cit., Section 657 BGB marginal no. 1 with references also to the opposing view) - and individual declarations of intent. The scope of application of both varschriften coincides. They are to be consulted in the interpretation next to each other (see Palandt/Ellenberger, loc. cit,
§ 157 8GB marginal no. 1 with further references).

In this context, the wording of the declaration as well as the circumstances surrounding it, in particular the history of its creation, the views of the parties and their interests as well as the purpose pursued by the legal transaction shall be taken into account. In case of doubt, preference shall be given to the interpretation which leads to a reasonable and consistent result which is fair to the interests of both parties.
The German Civil Code (Bürgerliches Gesetzbuch, BGB) provides for a result that is consistent with the requirements of honest business dealings (see Palandt/Ellenberger, loc.cit., § 133 BGB marginal nos. 14 - 20 with further references).

It is to be assumed with the district court that the interest of the defendant, which is recognizable for third parties from the invitation to tender (Annex K 1), is to be accorded significant importance in the interpretation.

The defendant, starting from the unquestionable certainty of the non-existence of the measles virus ("since we know that the measles virus does not exist and, knowing biology and medicine, cannot exist..."), is interested in showing that the measles virus does not exist.

The idea that measles is caused by a virus" can be seen as part of an advertising campaign.

campaign, which is supported by the federal government and the WHO in favor of the pharmaceutical industry. Therefore, "untruths" are claimed, ".... ... the dignity of the people ..." is violated, "and on this basis the vaccinations harm the physical integrity and the right to life ...". Particularly in the focus ri.ickt thereby the R -, namely Privatdozentin Dr. M . He assumes that, in view of the fact that the existence of the measles virus cannot be proven even by the award, "the further procedure" will be that complaints will be directed to the superiors of Privatdozentin Dr. M. : . because their behavior "- to act as if there were a measles virus - cannot be accepted". The award letter thus represents a part of the campaign conducted by the defendant as an opponent of the measles virus vaccination. He is clearly not interested in having his claim - which is in any case presented as unconf6rmable - about the non-existence of the measles virus refuted.

Nevertheless, the offer - as the defendant also confirmed in the appeal - is said to have been meant seriously, so that the "proof to the contrary" can be provided after the offer has been made.

However, the restrictive requirements of the defendant must be taken into account, because the defendant - recognizably for third parties - is not interested in the detection of the measles virus.

(1) Criterion: Evidence by a single scientific publication The prize money

will be awarded according to the clear wording of the announcement

> ,,... paid if a scientific publication is presented in which the existence of the measles virus is not only claimed, but also proven and therein among other things, its diameter is determined.
>
> The prize money will not be paid if the determination of the measles virus through meter is only Madelle or drawings like this ..."

According to the clear and unambiguous wording, a publication is to be submitted hereafter, in which the proof is to be erfi.illen according to these specifications.

Such an understanding is supported not only by the wording, but also by the fact that

a single work is not only self-contained in its external form and clearly delimited by the material structured in itself, but also that no dispute can arise as to which passage of which, if any, of a multitude of works can be used as evidence. In the case of a multitude of works, by which in their overall view a proof is to be led, it can be clearly more difficult to bring a jades of the works methodically and contentwise on a comparable and meaningful level. In addition, it limits the effort of the examination considerably, if the proof must be conducted according to the wording in one work. It is obvious that the defendant, recognizable also for third parties, cannot want that about 50, 100 or 500 different works are presented, from which individual text passages or sections are then put together like a puzzle, in order to then examine the statement in the overall context.

Thus, reasons of practicability and reasonableness speak in favor of understanding the invitation to tender as it is to be understood according to its wording. Furthermore, it is also recognizable for the third party and in view of the fact that the offeror also pays the reward, it is also not objectionable in good faith with regard to the custom of the trade (§ 157 of the German Civil Code) that the defendant did not want to see and must see his text interpreted according to an understanding that goes beyond the wording to the benefit of the person providing evidence.

Finally, there are no criteria for a reasonable limitation of the number of works to be submitted as evidence in the text of the invitation to tender, and no such criteria are apparent:

> Nor can it be concluded - contrary to the district court - from the need that publication practice in the medical research context has allegedly no longer been the monograph for decades that, contrary to the wording, the individual aspects can now be proven by a large number of specialist articles.
>
> Even if there was a practice, as the expert pointed out, that in the last decades practically no single monographs on a subject were produced, it does not seem impossible that such a monograph exists and can be presented. As the publications from the 50's show

As shown by the publications (E .p, - - , and 81 v. M, publications were also submitted that are more than 60 years old, i.e., written at a time when monographs may still have been published. Moreover, it cannot be ruled out a priori that a mo nography suitable for evidence purposes exists or is published for the purpose of obtaining the prize money in question. The fact that the defendant claims that the existence of almost all of the existing approx. 2,000 virus species, including their diameters, has been proven in a single publication each, also speaks in favor of the fact that the defendant may also have had in mind a scientific publication prepared specifically for the purpose of the award (sheet 386 of the appendix).

Although it may be in the interest of the plaintiff and of the provider of the evidence to pay the fees for the provision of the evidence, this is in the final analysis a matter for the payer, who alone determines what he is willing to pay for. In this sense, it is also apparent to the third party that the payer did not want to make it easier for the possible applicants for the prize money to prove the existence of a measles virus, which he did not want to do anyway.

The fact that the defendant did not raise the objection that six publications were submitted and not only one, immediately after the publications were submitted, does not prevent this. The defendant has safart objected that none of the submitted works is suitable to lead the proof. Only when the expert stated his conclusion that the evidence could be considered as established by a synopsis of all publications, it became necessary to object that in any case the evidence could not be established by one single publication.

Also the interpretation in good faith with regard to the custom of the trade according to § 157 8GB does not require a new interpretation favorable to the applicant for the prize money. It is not contrary to good faith if the person who has 100,000, his - for third parties recognizable - own representations - may the se also make it difficult to earn the prize money - to the MaP.istab of the Auslo bung bestimmt. A custom of the trade, which could oppose this, is neither carried var after recognizable.

As a result, an interpretation contrary to the unambiguous wording of the invitation is out of the question.

(2) Criterion ,,original work

As far as the defendant means that only an "original work" can be submitted, by which he understands the exact description of the experiments, the data evaluation and the discussion of the results (sheet 387 A), he may have aimed at this, but this does not emerge from the text of the invitation to tender, which is to be interpreted according to the objective horizon of the recipient. A review work would be sufficient in any case, if the scientific proof for the existence and size of the measles virus is led in it on basis of preceding work. .

(3) ,,Publication must come from the R! originate"

Neither the wording nor the apparent purpose of the invitation to tender indicates to the relevant recipient that it must be a publication of the R' . The circumstance that the question regarding the diameter of the

measles virus to PD Dr. M The question of whether the measles virus should be submitted to Dr. M. is equally inconclusive,

as the defendant's reference to the IfSG in its reply letter to the plaintiff.

(4) Publication must be "scientific" in the sense of the DFG criteria of 1998.

From the text of the award, the intended audience cannot recognize that a scientific publication is to be made according to the standard of the DFG criteria of 1998. All that is required is a "scientific publication". The IfSG, which is not referred to in this context, also does not specify a scientific standard.

The Brockhaus Enzyklopadie in 30 Sanden, 21st edition, vol. 30, states under "scientific book": "content-related designation for a book that is devoted to a scientific topic, is written ful1end on scientific findings". In the Grol1en Wor terbuch der Deutschen Sprache of the Duden (Vol. 6), scientific is defined as "relating to science, belonging to it, based on it.

In the Internet encyclopedia Wikipedia, scientific work is defined as "systematically structured".

A text in which one or more scientists present the results of their own research. According to this definition, the work of ,,

Hu. M ,-

" did not constitute a scientific work in any case, since even according to the expert's explanations (p. 17 of the expert opinion), it is a review article that presents the results of his or her own research.
results from original work authors summarized.

However, this definition must be questioned, as it also appears to be scientific if the previous work is systematically evaluated, summarized and, if necessary, new conclusions are drawn from it.

Thus, a review paper is a systematic compilation and processing of scientific findings on a topic from scientific publications,
is based on scientific findings, the work of "H" and "Mi" is also correct. and Mi *r" is to be* regarded as a scientific work, as is that of
,,D etal".

The defendant claims that the latter two publications were not independently peer-reviewed. The publication by " D1 et al." was published in an internal journal of a Japanese college, which was demonstrably not independently peer-reviewed. In the review of , ,H and M " cited
the authors just themselves, although the expert as a mandatory condition fi.ir
this type of publication had demonstrated the omission of own research results (p. 369 of the A.).

According to the expert, all articles are taken from journals with a peer review system and are thus usually reviewed by at least two independent scientists before publication and, if necessary, provided with correction requests (p. 17 of the expert opinion). This is contradicted by the defendant's assertions to the contrary. Ultimately, it can be left open - since it is not relevant to the decision - whether the objections of the defendant are justified and whether they were not excluded in accordance with § 531 (2) of the Code of Civil Procedure, since they were properly introduced into the proceedings for the first time in the second instance.

(5-7) Evidence of the existence of measles virus, diameter and non-use of mo dels.

The District Court's assessment of the evidence to the effect that, on the basis of the expert opinion obtained, it was proven that the publications submitted by the plaintiff in their entirety provided evidence of the existence and pathogenicity of the measles virus and that it was also possible to determine the diameter in the form requested by the defendant, is not objectionable in the final analysis.

The court of appeal shall, in accordance with Section 529 (1) no. 1 of the Code of Civil Procedure, apply the facts established by the court of first instance, unless specific indications give rise to doubts as to the correctness or completeness of the findings relevant to the decision, and
The court shall take new facts into account only insofar as they are to be taken into account (Section 529 (1) No. 2 of the Code of Civil Procedure). New facts are to be taken into account only insofar as they are to be taken into account (Section 529 (1) No. 2 of the Code of Civil Procedure).

The defendant is excluded from raising objections to the expert opinion of a court-appointed expert pursuant to Section 531 (2) of the German Code of Civil Procedure (ZPO) if he was able to raise them at first instance, because objections to an expert opinion are part of the new means of attack or defense (cf. KG Berlin, MOR 2007, 48 with further references and Zoller/He111er, loc.cit., Section 531 of the German Code of Civil Procedure, para. 31, with further references).

The Regional Court has evaluated the information provided by the expert, whose specialist knowledge cannot be doubted, in a detailed, comprehensible and convincing manner (see in particular p. 20 f. of the judgment under 2.). It is not recognizable that the laws of reasoning were violated or that other errors were made.

To the extent that the defendant argues that the court had not itself read and examined the publications written in English, this was not necessary, on the one hand, since these are medical articles which, without a translation, cannot be assessed by the court in any case, both in terms of language and in terms of their scientific classification and evaluation. Secondly, it was not argued in the first instance that the defendant had misrepresented the content of the articles. The defendant is therefore excluded from the proceedings with this argument in accordance with Section 531 (2) of the German Code of Civil Procedure (ZPO).

The same is true for the objection that from the six publications and the

-The authors claim that statements and arguments have been arbitrarily taken from publications which are interpreted contrary to the statements and intentions of the authors, that additional statements have been invented which have not been made in the publications, that a conglomerate of the authors' statements has been constructed from them in a way which is not comprehensible and verifiable, and other objections which will be addressed separately.

After submission of the expert opinion of November 17, 2014, the parties were given until January 20, 2015 to submit motions and supplementary questions to the written expert opinion (statement of November 24, 2014, pp. 98, 99 in the official file). The defendant commented on the expert opinion in a lawyer's letter dated February 3, 2015 and asked nine questions, which were in turn submitted to the expert. The expert submitted a supplementary statement on this (statement dated March 3, 2015, on sheet 132 of the appendix). At the meeting of March 12, 2015 (p. 139 et seq.), there was an opportunity to ask questions to the expert witness, which, according to the minutes of the meeting, in particular with regard to the questions asked by Assessor Sch for the defendant, was also used. The defendant did not have to be granted his own direct right to ask questions (see § 397 ZPO; see below).

The personal statement of the defendant on the expert opinion, which he prepared in the scope of 78 pages on February 2, 2015 (annex to sheet 125 of the appendix), did not have to be considered in detail by the expert and the court, after a lawyer's letter by the court had been filed.

3.2.2015 nine supplementary questions were asked by the lawyer1 and the court indicated that it assessed them in such a way that "a lawyer's condensation of the objections and the supplementary questions of the defendant is fulfilled".

Pursuant to Section 78 of the German Code of Civil Procedure (ZPO), lawyers are compelled to appear before the Regional Court. Within this framework, written submissions must be made by the lawyer in the legal dispute before the Regional Court. In this respect, the defendant's representative also commented on the expert's opinion and asked supplementary questions (see also Section 411 (4) of the Code of Civil Procedure). Pursuant to Section 397 (1) of the Code of Civil Procedure, the parties are not entitled to directly question the witness (the provision applies mutatis mutandis to the expert witness, Section 402 of the Code of Civil Procedure). However, they are entitled to submit questions during the examination. Only the lawyer has the right to directly ask questions to the expert witness.

(Sections 397 (2), 402 of the Code of Civil Procedure), the party himself may be permitted to do so by the chairman, which was probably not done here.

The Regional Court stated in its order of February 19, 2015 (p. 126 of the official file) that it assumed that "a lawyer's condensation of the objections and supplementary questions of the defendant had taken place" in the defendant's written statement. This was neither contradicted in the written statement nor in the ter min of 12.03.2015 (p. 139 ff. A.). The court could therefore assume that the questions posed by the lawyer were maf?igebend and did not have to go into the 58 or 78-page statement of the defendant himself again. It is also not alleged that the questions posed by the defendant's representative to the expert were not admitted at the hearing of 12.3.2015.

The fact that questions were not allowed to be asked at the hearing cannot be taken from the record. After the expert's dictation had been approved by him and all parties had expressly renounced to play again, it is noted in the record that no further questions had been put to the expert, the parties had continued the proceedings in dispute with regard to the result of the evidence with the motions recorded at the beginning and no further motions had been put (sheet 149 of the official record).

The note in the minutes formally proves the hearing about the taking of evidence (see Zoller/Stober, a.a.a., § 165 ZPO, marginal no. 2, with further references). Only the proof of falsity (§ 165 sentence 2 ZPO) is admissible against this. It is not claimed that a knowingly false certification or subsequent falsification within the meaning of §§ 267, 271, 348 StGB has been committed. Furthermore, it is not disputed that further questions to the expert are not allowed.
as noted in the minutes on p. 11.

To the extent that the defendant argues that the judgment is based on incorrect premises, at least to the extent that the expert did not state that the publications contain control experiments to exclude cellular artifacts (p. 23 of the judgment under b., para. 2), this cannot be accepted. In his first statement of 03.03.2015, dart p. 3 (p. 134 of the appendix) under 6., the expert precisely addresses this issue and states that the necessary data and control experiments for the exclusion of cellular artifacts instead of the measles virus are contained in the scientific articles, whereby he refers to his expert opinion.

In the end, the defendant cannot succeed with the claim that it was allegedly not clarifiedwhetherribosomesfound in the interior of the measles viruses during the R' and whether this excludes the characteristic as a virus. The expert stated in this regard (minutes, p. 9, p. 147) that the measles virus did not contain ribosomes and that such a statement was astonishing and would attract the greatest attention, but that it did not necessarily "overthrow" the concept of a virus. The conceptual understanding of the virus is in fact in a state of flux. The mere presence of ribosomes does not necessarily stand in the way of the existence of a virus.

As far as the diameter of the measles virus was allegedly given by the R was allegedly stated to be 120 - 400 nm (cf. p. 23 of the case file), this also does not contradict the Regional Court's assessment of the evidence. This Gr6P.ien range lies within the range of 50 to 1,000 nm, which the district court described as scientifically plausible on the basis of the expert opinion. Therefore, it cannot be recognized that the two measured values are mutually exclusive.

The objection that the book published by the defendant, "Der Masernbetrug" ("The Measles Fraud"), was not addressed is also not valid. There is already a lack of substantiated argumentation, in how far which evidence is to be led by which content. In the rest, both the expert and the district court have dealt with the defendant's own hypotheses and have taken note of and evaluated them as such. To this end, the book was not presented by the defendant.

Insofar as the defendant believes that the expert is biased because he sent the supplementary opinion of 03.03.2015 (sheet 132 of the appendix) to "Mr. M Sch ..." to the Regional Court of Ravensburg, i.e. used the first name of the Chairman, it is already not apparent why a reason for bias should arise from this (especially since the e-mail from the Regional Court to the expert of 2.3.2015 indicated that he had done so; cf. p. 130). Furthermore, the motion to recuse was also filed too late. Pursuant to Section 43 of the Code of Civil Procedure, which is also to be applied accordingly to experts (cf. ZollerNollkommer, Section 43 of the Code of Civil Procedure, para. 2, with further references), a party may challenge a judge for bias.
- In this case: the expert - because of the concern of bias, if she has entered into a hearing with him, without asserting the reason for rejection known to her, or has made motions. The defendant has entered into both the

The court did not admit the defendant to the hearing and did not make any motions without asserting the alleged reason for bias mentioned above.

Insofar as the defendant has now submitted a number of statements by opponents of the vaccine on appeal which are intended to support its position, it can be left open - because they are not relevant to the decision - whether they should have been admitted (Section 531 (2) of the German Code of Civil Procedure).

In conclusion, the appeal, to the extent that it is admissible, is successful in any case, because the criterion of the offer to prove the existence of the measles virus by "a scientific publication" was not fulfilled by the plaintiff. Consequently, the plaintiff is not entitled to any pre-trial attorney's fees.

III.

1. The decision on costs is based on Sections 91, 92 (2) No. 1 of the German Code of Civil Procedure.

2. The decision on the preliminary enforceability has its basis in §§ 708 No. 10, 711 ZPO.

3. The appeal is not admissible as the requirements of Section 543 (2) of the German Code of Civil Procedure (ZPO) are not met.

OleschkewitzDr	. SchumannDr	. Mi.inch
Presiding judge at the Court	Judge Higher Regional Courtat the Regional Courtat	Judge the Higher Regional

Verkündet am 16.02.2016

(Reinhardt)

Clerk of the Court of Arraignment